IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1096 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HIMATSINH @ RAJU PUNAMSINH

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 1096 of 2000

MS SADHANA SAGAR for Petitioner No. 1

THROUGH JAIL for Petitioner No. 1

MS NV JOSHI, APP for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 20/03/2003

ORAL JUDGEMENT

This is an appeal under Section 374 of the Code of Criminal Procedure, 1973 (for short, "the Code")

challenging the judgment and conviction order dated 21/11/2000, recorded by the learned Additional Sessions Judge, Vadodara in Sessions Case No. 14 for 2000, under which the learned Judge convicted the present appellant for offences punishable under Section 328 and 379 of IPC and sentenced as follows;

(1) For an offence punishable under Section 328 of IPC, to undergo RI for Five years and to pay fine of Rupees 500/- and in default of payment of fine, to further undergo RI for Three months.

(2) For an offence punishable under Section 379 of IPC, to undergo RI for Two years and to pay fine of Rupees 300/- and in default of payment of fine, to further undergo RI for One month.

2. As per the case of prosecution, on 13/03/99 the informant, Ashok Patel had gone to Surat for his personal work with his friend Naresh Panchal. Both of them had gone by ST bus. Naresh Panchal had dropped down at an intermediate place and the informant reached ST Bus Depot at about 4.00 AM. Since it was early in the morning, the informant went to the ST Bus Station Canteen at about 4.30AM. That at that time, the present appellant met him and both of them had a cup of tea. That, thereafter, the appellant started talking with the informant about his alleged business. Thereafter, the appellant offered a chocolate to the informant, at Natraj Talkies. The chocolate contained poisonous drug, on account of which the informant became unconscious. When he got his consciousness back on 18/03/99, he found himself in the hospital of Dr. Vasantbhai Patel. The informant also learned that the appellant had offered him poisonous chocolate and since the informant became unconscious, the appellant took away his golden chain and golden ring and also took away his Kinetic Honda.

3. Thereafter, FIR was filed and since the offence was triable by the Court of Sessions, the learned Magistrate committed the case to the Court of Sessions. The Sessions Court conducted the trial and at the close of trial, the court found the appellant guilty for offences punishable under Section 328 and 379 of IPC. After hearing the appellant on the quantum of punishment, the trial court inflicted punishment as aforesaid.

4. Feeling aggrieved by the said judgment and conviction order of the trial court, the appellant has

preferred this appeal before this Court.

5. In the present appeal, it has been contended that the trial court did not have sufficient material in order to convict the appellant. That the conviction is illegal and that the sentence imposed is on the higher side. It is, therefore, prayed that the appeal be allowed, the judgment and conviction order of the trial court be set aside and the appellant be acquitted of the aforesaid offences.

6. The appeal was admitted and was kept for final hearing. At this stage, I have heard Ms.Sadhana Sagar learned advocate for the appellant and Ms.N V Joshi, learned APP for the State. They have taken me through the evidence of the witnesses and through the judgment of the trial court.

7. After arguing the matter for some time, the learned advocate for the appellant has contended that it is not possible to challenge the judgement, on the factual merits and therefore, it was considered that so far the conviction is concerned, it is required to be confirmed. With respect to the quantum of punishment, it has been contended that the present appellant has taken up a case before the trial court, that having regard to the facts and circumstances of the case and looking to the family circumstance of the appellant and considering the fact that the present appellant belongs to a distant place of Rajasthan State, the quantum of punishment imposed, may be adequately reduced. It seems that there are other cases also pending against the appellant and in some cases he has been convicted. However, this is not treated to be a subsequent offence, after the previous conviction.

8. At the same time, considering the facts of the case, it seems that the appellant was put to certain circumstances, which led him to commission of the aforesaid offences.

9. In above view of the matter, in my opinion, the substantive sentence imposed for an offence punishable under Section 328 of IPC can be reduced to some extent.

9. For the foregoing reasons, this appeal is partly allowed. the judgment and conviction order recorded by the trial court on 21/11/2000, are ordered to be confirmed. However, with respect to the quantum of punishment, it is directed that instead of sentencing the appellant to suffer RI for Five Years for an offence

punishable under Section 328 of IPC, the appellant shall undergo RI for Four Years for an offence punishable under Section 328 of IPC. Remaining part of the judgment and conviction order of the trial court is hereby confirmed.

(D. P. Buch, J.)

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